

HON. JOHN C. COUGHENOUR

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Wolfire Games, LLC, Sean Colvin, Susann Davis, Daniel Escobar, William Herbert, Ryan Lally, Hope Marchionda, Everett Stephens, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Valve Corporation,

Defendant.

Civil Action No. 2:21-cv-00563-JCC

DARK CATT STUDIOS HOLDINGS, INC., a Delaware corporation, and DARK CATT STUDIOS INTERACTIVE LLC, an Illinois limited liability company, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Valve Corporation,

Defendant.

Civil Action No. 2:21-cv-00872-JCC

**STIPULATED MOTION TO
CONSOLIDATE RELATED ACTIONS
UNDER LOCAL CIVIL RULE 42**

NOTE ON MOTION CALENDAR: July 21, 2022

Pursuant to Local Civil Rule (“LCR”) 42(a), Plaintiffs Wolfire Games, LLC, Dark Catt Studios Holdings, Inc., Dark Catt Studios Interactive LLC, William Herbert, Daniel Escobar, Sean Colvin, Everett Stephens, Ryan Lally, Susann Davis, and Hope Marchionda (collectively “Plaintiffs”) and Defendant Valve Corporation (collectively with Plaintiffs, the “Parties”)

1 respectfully submit this Stipulated Motion to Consolidate Related Actions and for Leave to File a
2 Consolidated Amended Complaint.

3 This Stipulated Motion seeks to consolidate two related actions currently pending in this
4 Court: *Wolfire Games et al. v. Valve Corporation*, Case No. 2:21-cv-00563-JCC (W.D. Wash.)
5 (“*Wolfire*”), and *Dark Catt Studios et al. v. Valve Corporation*, Case No. 2:21-cv-00872-JCC
6 (W.D. Wash.) (“*Dark Catt*”).

7 The *Wolfire* and *Dark Catt* actions involve claims asserted on behalf of overlapping
8 putative classes regarding allegedly anticompetitive conduct against the same Defendant.
9 Consolidating the cases under LCR 42 will promote efficiency and conserve judicial resources, as
10 well as the Parties’ resources.

11 IT IS THEREFORE STIPULATED AND AGREED, THROUGH COUNSEL OF
12 RECORD, THAT:

13 The Court should consolidate the *Dark Catt* action into the lower-numbered *Wolfire* action,
14 under the master caption *In re Valve Antitrust Litigation*; and

15 If the Court consolidates the *Wolfire* and *Dark Catt* cases, Plaintiffs will file a single
16 consolidated complaint in the consolidated action on behalf of game publishers by August 26,
17 2022.

18 Plaintiffs having further stated an intention not to add to any consolidated complaint any
19 substantively new allegations that were not previously included in either the *Wolfire* or *Dark Catt*
20 complaints, and recognizing that certain of the claims in the *Wolfire* complaint were dismissed
21 with prejudice, but seeking to preserve the appeal rights as to those allegations, IT IS
22 THEREFORE FURTHER STIPULATED AND AGREED THAT:

23 Pursuant to established law in this Circuit, Plaintiffs do not intend to include in any
24 consolidated complaint those claims dismissed with prejudice in the *Wolfire* action (*Wolfire* Dkt.
25 No. 80), but expressly state their intent to preserve their right to appeal the dismissal of those
26 claims.¹

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¹ See, e.g., *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (“For claims dismissed

DATED July 21, 2022.

/s/ Alicia Cobb

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with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal.”); *see also Vien-Phuong Thi Ho v. Reconstruct Co., NA*, 858 F.3d 568, 577 (9th Cir. 2017).

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18 *Proposed Interim Executive Committee*
19 *Member*

1 IT IS SO ORDERED.

2 DATED this ____ day of _____, 2022.

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Hon. John C. Coughenour
United States District Judge
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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2022, I caused a true and correct copy of the foregoing to be filed in this Court's CM/ECF system, which sent notification of such filing to counsel of record.

DATED July 21, 2022.

/s/ Alicia Cobb
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